

POLICE POWERS DURING PUBLIC EMERGENCIES

Police Authority to Act Without a Warrant or Court Order Under the Community Caretaking Doctrine

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This memorandum deals with the scope of a police officer's authority during a public emergency to act without a warrant or court order to render aid to victims or prevent serious injury to people or property. Herein, a "public emergency" is a natural or man-made event that requires a police officer to act immediately to render aid to injured victims of the event, or minimize or neutralize a serious threat of death or serious bodily injury or property damage.

The scope of a police officer's authority at the scene of a public emergency to enter, search or seize private property, interfere with property rights, restrict movement of people or animals, or otherwise intrude into private areas, varies greatly depending on the function the police officer is fulfilling at the scene of the emergency. When acting in furtherance of his traditional *law enforcement* responsibilities, the scope of the officer's authority is greatly limited by the 4th Amendment's prohibition on unreasonable searches and seizures.¹ However, when acting in furtherance of his *community caretaking* responsibilities, a police officer has far broader authority to take action necessary to render aid and prevent serious injury to people or property.²

Law Enforcement Function

Because police officers generally understand the restrictions imposed on them by the 4th Amendment when acting in furtherance of their *law enforcement* responsibilities, this memorandum only briefly summarizes the applicable 4th Amendment law.

When the primary purpose of a police officer's action is to detect and gather evidence of criminal activity or apprehend criminals, the 4th Amendment greatly constrains his authority and conduct: except in limited circumstances, the 4th Amendment prohibits warrantless searches and seizures. Thus, without a warrant, a police officer may not detain any person, conduct a search of a person or property, or seize property, unless his conduct falls within a recognized exception to the 4th Amendment's warrant requirement.

¹ Article 14 of the Massachusetts Declaration of Rights similarly requires that searches and seizures by police officers be reasonable, and establishes a presumption that warrantless searches and seizures are unreasonable and, therefore, unconstitutional, unless conducted within a recognized exception to the warrant requirement. In this memorandum, references to the 4th Amendment should be construed as including Article 14 of the Massachusetts Declaration of Rights.

² Indeed, courts have said that police action pursuant to the *community caretaking* function do not require judicial justification. *Commonwealth v. Evans*, 436 Mass. 369 (2002).

Under the recognized exceptions to the 4th Amendment's warrant requirement, a police officer fulfilling his *law enforcement* responsibilities at a public emergency may:

- Conduct a threshold inquiry – a police officer may briefly detain a suspect and his property upon a reasonable suspicion that the suspect has committed, is committing, or is about to commit a crime.³ Under certain circumstances, a police officer may also pat frisk the suspect and his property for weapons.⁴
- Arrest someone whom he has probable cause to believe has committed an offense for which the police officer has a common law or statutory right of arrest.⁵
- Secure (but not search) a premises or person while a search warrant is being obtained if a police officer has probable cause to believe that his failure to secure the premise or person will result in the loss or destruction of evidence.⁶ Once a search warrant is issued, there is authority to detain persons present in the place to be searched during the execution of the search.⁷
- Conduct a search under one of the recognized exceptions to the search warrant requirement:
 - Search upon exigent circumstances;
 - Search with consent;
 - Search incident to arrest;
 - Inventory search;
 - Plain view search;
 - Administrative Search;
 - Searches of vehicles under the automobile exception.

Generally, during a public emergency a police officer *exercising his law enforcement responsibilities* does *not* seem to have constitutional authority to:

- Detain crime victims and witnesses (as opposed to suspects);
- Order victims or potential victims to be isolated;
- Order persons or property to be decontaminated;

³ See, generally, *Terry v. Ohio*, 392 U.S. 1 (1968); *Commonwealth v. Watson*, 430 Mass. 725, 729 (2000).

⁴ *Terry v. Ohio*, 392 US 1, 28 (1968); *Commonwealth v. Ballou*, 350 Mass. 751, 756 (1966).

⁵ *Commonwealth v. Frazier*, 410 Mass. 235, 241 (1991) (right of arrest for felonies); *Commonwealth v. Howe*, 405 Mass. 332, 334 (1989) (right of arrest for certain misdemeanors).

⁶ *Commonwealth v. Navarro*, 39 Mass. App. Ct. 161, 163 (1995) (securing premises pending issuance of search warrant); *Commonwealth v. Taylor*, 426 Mass. 189, 195 (1997).

⁷ *Michigan v. Summers*, 452 US 692 (1981); *Mena v. City of Simi Valley*, 226 F3d 1031, 1039 (9th Cir. 2000).

- Compel a person to receive medical evaluation or care;
- Order an evacuation of private property for public health or safety reasons;
- Seize/Secure a building or vehicle for public health/safety reasons such as stopping the spread of a harmful agent.

Community Caretaking Function

While the 4th Amendment may severely restrict a police officer's authority to act at a public emergency if he is exercising his *law enforcement* responsibilities, courts have concluded that the constitution does not require the police to sit idly by if immediate action is needed to prevent serious harm to people or property. If a police officer acts in furtherance of his *community caretaking* responsibility, he has broad authority to take immediate action to render aid, assess and respond to situations posing an imminent serious threat to life or property, and otherwise protect the public health and safety from imminent harm.⁸

Four conditions must be present in order for a police officer to take action under the *community caretaking* doctrine that otherwise might be considered an unlawful search and seizure under the 4th Amendment:

- The police officer must have a reasonable grounds to believe that an emergency exists that presents an imminent and serious threat to life or property. In other words, the police officer must reasonably believe that there is an immediate need for police assistance for the protection of life or substantial property interests.
- The police officer must in fact take immediate action – delay in taking action suggests that immediate action was not necessary. However, it may be reasonable to delay action in order to bring appropriate emergency personnel and resources to the scene or protect the safety of the police officer.
- The police officer's actions must be totally divorced from the detection or investigation of crime, or acquisition of evidence. In other words, the police officer must *not* be exercising his *law enforcement* responsibilities.
- The police officer's actions must be reasonable in light of the particular emergency, and be no broader than necessary to alleviate the emergency at hand.

⁸ Cases discussing the *community caretaking* function include *Mincey v. Arizona*, 437 US 385 (1978); *Michigan v. Tyler*, 436 US 499 (1978); *South Dakota v. Opperman*, 428 US 364 (1976); *Cady v. Dombrowski*, 413 US 433 (1973); *Commonwealth v. Snell*, 428 Mass 766 (1999); *Commonwealth v. Murdough*, 428 Mass 760 (1999); *Commonwealth v. Leonard* 422 Mass. 504 (1996); *Commonwealth v. McDevitt*, 57 Mass. App. Ct. 733 (2003); *Commonwealth v. Lubiejewski*, 49 Mass. App. Ct. 212, 216-217 (2000). Also see Decker, *Emergency Circumstances, Police Response, and 4th Amendment Restrictions*, 89 J. Crim Law and Criminology 433 (1998); *The Emergency Doctrine, Civil Search and Seizure, and the 4th Amendment*, 43 Fordham L. Rev. 571 (1975); *The Emergency Exception to the 4th Amendment*, 9 Univ. Richmond L. Rev 249 (1975); *Response to Emergency*, 68 Am Jur 2d 134.

Citing the *community caretaking* function, courts have approved of police officers making non-consensual warrantless entries into premises during emergencies⁹ to:

- Render emergency medical treatment;¹⁰
- Search for a missing¹¹ or kidnapped¹² person;
- Check on the welfare of children reportedly left unattended;¹³
- Interrupt an assault¹⁴ or other violent crime¹⁵ in progress;
- Attend to a dead body¹⁶ or determine the veracity of a report of a homicide¹⁷;
- Extinguish a fire;¹⁸
- Neutralize explosives¹⁹ or volatile chemicals²⁰.

The *community caretaking* doctrine also has been applied in the context of taking immediate action to protect the lives of animals.²¹

It cannot be stressed enough that:

- The *community caretaking* authority to detain people, seize property, enter into private premises and otherwise take action that would violate the 4th Amendment if the police officer were exercising his *law enforcement* responsibilities, is limited to emergencies involving an immediate threat of death, serious injury or substantial property damage.²²
 - Note: a police officer may not have the expertise to determine whether a particular substance, or an ill person, presents an immediate danger to others. As such, it is imperative that the police have the ability to communicate with, and receive guidance in a timely manner from experts, such as public health professionals or hazardous materials specialists. With input from an expert, a police officer at the scene of an emergency will be in a better position to determine that an emergency exists and the type of action necessary to mitigate the harm and protect the public.

⁹ See *United States v. Donlan*, 909 F2d 650 (1990 for a general discussion of the right of police officers to make warrantless entries into private premises under the *community caretaking* doctrine.

¹⁰ *City of Troy v. Ohlinger*, 475 NW2d 54 (Michigan 1991).

¹¹ *Brimage v. State*, 918 SW2d 466 (Tex 1996).

¹² *Chaney v. State*, 612 P2d 269 (Okla. 1980).

¹³ *State v. Garland*, 636 A2d 541 (NJ 1994).

¹⁴ *United States v. Booth*, 455 A2d 1351 (D.C. 1983).

¹⁵ *State v. Klauss*, 562 A2d 558 (Conn. 1989).

¹⁶ *People v. Brooks*, 289 NE2d 207 (Ill. 1972).

¹⁷ *Mincey v. Arizona*, 437 US 385 (1978).

¹⁸ *United States v. Santana*, 427 US 38 (1976); *Steigler v. Anderson*, 496 F2d 793 (3rd Cir. 1974).

¹⁹ *United States v. Wilson*, 865 F2d 215 (9th Cir. 1989); *United States v. Boettger*, 71 F3d 1410 (8th Cir. 1995).

²⁰ *People v. Clements*, 661 P2d 267 (Colo. 1983).

²¹ *State v. Bauer*, 379 NW2d 895 (1985).

²² *Commonwealth v. McDevitt*, 57 Mass. App. Ct. 733 (2003).

- The police officer's conduct must be motivated by a desire to render aid or protect the public, rather to gather evidence of a crime, apprehend a criminal, or otherwise exercise his *law enforcement* authority.²³
- The police officer's actions must be limited to rendering emergency assistance,²⁴ and the police must withdraw once the emergency has abated.²⁵

Under appropriate circumstances and when reasonably necessary, the *community caretaking* doctrine seems to permit a police officer dealing with a public emergency to:

- Forcibly enter private premises to locate victims and render medical treatment;
- Take appropriate action to contain and neutralize harmful agents on private property that pose an immediate and serious threat to public health or property;
- Forcibly isolate people or property who pose a serious threat to others because of their exposure to harmful agents or contagions;
- Mandate the evacuation of a building or area if necessary to protect occupants or others;
- Enforce decontamination of people or property if necessary to protect others from serious harm.

Police officers exercising their *community caretaking* responsibilities at a public emergency may encounter people who refuse medical treatment or refuse to comply with police orders. Guidelines for dealing with such include:

- A competent person has the right to refuse medical treatment even if the refusal is likely to result in serious harm or death. But, if the person is not competent to understand the situation and the consequences of refusing treatment, the police may forcibly render aid.²⁶
- Chapter 123, Section 12 of the General Laws permits a police officer to restrain a person and remove him to a medical facility if the officer reasonably believes that the failure to hospitalize the person will create a likelihood of serious harm by reason of mental illness.²⁷
- Although a competent person may refuse emergency medical treatment, the police may nonetheless isolate or decontaminate him if he poses an immediate threat to others because of his exposure to a harmful agent or contagion.

²³ *Commonwealth v. Murdough*, 428 Mass. 760 (1999).

²⁴ *Mincey v. Arizona*, 437 U.S. 358 (1978).

²⁵ *Michigan v. Clifford*, 464 US 287 (1984); *Michigan v. Tyler*, 436 US 499 (1978).

²⁶ The right to refuse medical treatment is discussed in *Shine v. Vega*, 429 Mass. 456 (1999); *In the Matter of McCauley*, 409 Mass 134 (1991); *Norwood Hospital v. Munoz*, 409 Mass 116 (1991).

²⁷ See *Ahern v. O'Donell*, 109 F3d 809 (1st Cir. 1997); *McCabe v. Lifeline Ambulance*, 77 F3d 540 (1st Cir. 1996).

- Note: because the police should take no more action than is necessary to deal with the emergency, in some circumstances it may be advisable to isolate a person who refuses to be decontaminated and then seek a court order permitting decontamination.
- While a competent person has the right to refuse medical treatment, he does not have a right to commit suicide. Thus, a police officer may forcibly remove a person from a premises or place if leaving him there poses an imminent and serious threat to him or others.

This memorandum reflects the opinions of its author and should not be construed as an official legal opinion of the Office of the Attorney General of Massachusetts.